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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 PAUL ADAMS,) CASE NO. 15-CV-1067-SJO-PJW
11)
12 Plaintiff,)
13 v.) ORDER REVOKING PLAINTIFF'S *IN*
14 CDCR, ET. AL.,) *FORMA PAUPERIS* STATUS AND
15) DISMISSING ACTION WITHOUT
16) PREJUDICE
17)
18 Defendants.)
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16 On May 29, 2015, Plaintiff, a state prisoner incarcerated at
17 California Rehabilitation Center, filed a civil rights action under 42
18 U.S.C § 1983, claiming that his constitutional rights were being
19 violated by the California Department of Corrections and others.
20 (Doc. No. 1.) Plaintiff also filed a request to proceed *in forma*
21 *pauperis* ("IFP"), which was granted. (Doc. Nos. 2, 7.) Defendants
22 now move under 28 U.S.C. § 1915(g) to revoke Plaintiff's IFP status,
23 arguing that he had six strikes at the time the Court approved his IFP
24 application. Plaintiff opposes the motion. For the following
25 reasons, Defendants' motion to revoke Plaintiff's IFP status is
26 granted and the action is dismissed without prejudice.

27 Under 28 U.S.C. § 1915(g), a prisoner is not allowed to proceed
28 IFP if he has had three previous cases dismissed because they were

1 frivolous, malicious, or failed to state a claim upon which relief can
2 be granted. Defendants have provided the Court with six cases that
3 they claim constitute strikes.¹ Plaintiff argues that one of these
4 six cases was filed by another individual named Paul Adams but does
5 not challenge the validity of the other five. Thus, even without that
6 case, Plaintiff has sustained five strikes.

7 Plaintiff argues that he should still be allowed to proceed IFP
8 because he falls within the exception to the three strikes provision
9 for prisoners who are in imminent danger of serious physical harm.
10 See 28 U.S.C. § 1915(g). He complains that he is being exposed to
11 "black mold asbestos," which is being spread through animals near the
12 prison. He claims that a corrections officer told him that certain
13 buildings near the prison grounds were unstable, that there was
14 asbestos in them, and that, if there was an earthquake and the
15 buildings collapsed, the asbestos would become airborne.

16 Even assuming that Plaintiff's claims were true, they are not
17 enough to establish imminent danger of serious physical injury under
18 § 1915(g). See *Polanco v. Hopkins*, 510 F.3d 152, 155 (2d Cir. 2007)
19 (affirming district court's denial of IFP status where three-strike
20 prisoner alleged speculative health risks associated with exposure to
21 mold); *Tierney v. Atkins*, 2012 WL 2021373, at *3 (D. Haw. June 4,

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23 ¹ *Adams v. Small, et. al.*, CV 12-55328 (9th Cir.) (dismissed for
24 failure to state a claim); *Adams v. Gottlieb, et. al.*, CV 09-3027
25 (C.D. Cal.) (denying in *forma pauperis* on the grounds that the case
26 was *Heck* barred); *Adams v. Gottlieb, et. al.*, CV 07-6820 (C.D. Cal.)
27 (barred by *Heck v. Humphrey*); *Adams v. Baca, et. al.*, CV 99-5169 (C.D.
28 Cal.) (dismissed for failure to state a claim); *Adams v. Raske, et.
al.*, CV 11-243 (S.D. Cal.) (dismissed for failure to state a claim,
frivolity, failing to comply with Rule 8 and a court order); *Adams v.
Small, et. al.*, CV 10-1211 (S.D. Cal.) (dismissed for failure to state
a claim).

1 2012) (rejecting three-strike prisoner's claim that he met serious
2 danger exception to § 1915(g) because he was in danger from asbestos
3 in his cell).

4 For these reasons, Plaintiff's case is dismissed without
5 prejudice. See *O'Neal v. Price*, 531 F.3d 1146, 1156 (9th Cir. 2008)
6 (affirming district court's dismissal of case without prejudice where
7 prisoner had accumulated three strikes). He may refile the Complaint
8 if he chooses provided that he pays the full filing fee at the time of
9 filing.

10 IT IS SO ORDERED.

11
12 DATED: January 27, 2016.

13 *S. James Otero*

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15 S. JAMES OTERO
16 UNITED STATES DISTRICT JUDGE
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22 Presented by:

23 *Patrick J. Walsh*

24 _____
25 PATRICK J. WALSH
26 UNITED STATES MAGISTRATE JUDGE
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